

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEBRASKA**

In the Matter of the Petition of Nebraska)	Application No. NUSF-77.15
Telecommunications Association for)	Progression Order No. 7
Investigation of Processes and Pending)	
Procedures regarding the Nebraska)	
Universal Service Fund: Application to)	
the Nebraska Broadband Pilot Program)	
(NEBP) received from Pierce Telephone)	
Company)	

PRE-FILED REBUTTAL TESTIMONY OF MIKE DRAHOTA

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME.**

3 A. My name is Mike Drahota. My business address is 100 North Victory Road, Norfolk,
4 Nebraska 68701.

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Cable One, Inc. ("Cable One"). I am the General Manager of Cable
7 One's Norfolk, Nebraska cable system

8 **Q. FOR WHOM ARE YOU SUBMITTING THIS REBUTTAL TESTIMONY IN**
9 **THIS PROCEEDING?**

10 A. I am providing rebuttal testimony on behalf of Cable One.

11 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
12 **PROCEEDING?**

13 A. The purpose of my rebuttal testimony is to support Cable One's protest of Pierce
14 Telephone Company, Inc.'s ("Pierce") NUSF-77 Broadband Application ("NUSF-77
15 Application" or "Application"), which seeks funding under the Nebraska Broadband Pilot
16 Program (NEBP) to provide wireless broadband services to the rural areas surrounding
17 the City of Norfolk, Nebraska, which by sheer proximity, obviously include surrounding
18 areas within Madison County, Pierce County, Stanton County, and Wayne County.
19 Furthermore, my rebuttal testimony will also confirm that—despite Pierce's assertions
20 stating otherwise—these areas are neither "unserved" nor "underserved" and multiple
21 other fixed broadband providers, including Telebeep and Connecting Point, already
22 provide internet access service exceeding the NEBP's 4 Mbps downstream and 1 Mbps
23 upstream minimum standard.

1 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY IN THIS**
2 **PROCEEDING.**

3 A. My pre-filed rebuttal testimony addresses several aspects of the NEBP and Pierce's
4 Application seeking funding to provide wireless broadband services in the rural areas
5 surrounding the City of Norfolk, Nebraska.

6 **Q. WILL YOU BE PRESENTING ANY EXHIBITS IN CONNECTION WITH YOUR**
7 **REBUTTAL TESTIMONY?**

8 A. No.

9 **II. NEBRASKA BROADBAND PILOT PROGRAM (NEBP)**

10 **Q. ARE YOU FAMILIAR WITH THE NEBRASKA BROADBAND PILOT**
11 **PROGRAM (NEBP)?**

12 A. Yes.

13 **Q. COULD YOU PLEASE DESCRIBE THE NEBP, GENERALLY, INCLUDING ITS**
14 **PURPOSE?**

15 A. The NEBP is a program that was created to provide specific and targeted broadband
16 support to unserved and underserved areas in Nebraska to close the broadband
17 availability gap. The Commission determined that support should be made available for
18 broadband capital improvement projects and such support should be focused on
19 providing quality high-speed services to consumers in all regions of Nebraska.

20 **Q. ARE YOU FAMILIAR WITH THE REQUIREMENTS SET FORTH UNDER**
21 **THE NEBP FOR PROVIDERS SEEKING FUNDING FOR BROADBAND**
22 **SERVICES?**

23 A. Yes.

1 **Q. COULD YOU PLEASE DESCRIBE THOSE REQUIREMENTS?**

2 A. Yes. The purpose of the NEBP is to “target support to areas of the state not served by
3 broadband or areas which are underserved by speeds lower than 4/1 Mbps” and, as such,
4 the Commission is only permitted to provide funding—for “building infrastructure to
5 provide adequate broadband service”—to one broadband network in a given service area,
6 with first priority given to areas considered to be “unserved,” followed by “underserved”
7 areas. Ne. Pub. Serv. Comm’n (NPSC), *Order*, Application No. NUSF-77, Progression
8 Order No. 7, Application No. NUSF-69, Application No. NUSF-26 (Jan. 15, 2013)
9 [hereinafter “*NPSC Order*, Jan. 15, 2013”] (agreeing with Cox’s argument in which Cox
10 raised concerns about the Commission providing funding under the NEBP “to a carrier
11 that seeks to upgrade equipment and/or facilities located within, adjacent to, or nearby an
12 area already served by an un-subsidized provider” and finding that funding under the
13 NEBP should be limited to subsidizing transport to unserved and underserved areas and
14 “in no way be used to fund the enhancement of speeds or deployment of broadband
15 within an already served area”); NPSC, *Order Issuing Findings, Seeking Further*
16 *Comments and Setting Hearing*, Application No. NUSF-77, Progression Order No. 4
17 (Sept. 27, 2011) [hereinafter “*NPSC Order*, Sept. 27, 2011”]. By focusing on providing
18 support to *unserved* areas, the Commission ensures that it does not “support[] more than
19 one broadcast provider in a given support area.” *NPSC Order*, Sept. 27, 2011; *see also*
20 NPSC, *Order Seeking Comments*, Application No. NUSF-77, Progression Order No. 8
21 (Apr. 23, 2013) (“[T]he Commission has made it clear that its priority is to promote
22 broadband availability in areas that are currently unserved or underserved.”). According
23 to the NEBP, an “unserved” area is defined as any area where no facilities-based provider

1 offers access at speeds greater than 56K whereas an “underserved” area is defined as any
2 area where a facilities-based provider offers access at speeds greater than 56K down but
3 less than broadband.

4 **III. PIERCE TELEPHONE COMPANY, INC.’S NUSF-77 BROADBAND**
5 **APPLICATION SEEKING FUNDING FROM THE NEBP TO PROVIDE**
6 **BROADBAND WIRELESS SERVICE IN THE RURAL AREAS**
7 **SURROUNDING NORFOLK, NEBRASKA**

8 **Q. HAVE YOU REVIEWED PIERCE’S APPLICATION?**

9 A. Yes.

10 **Q. WHY IS CABLE ONE PROTESTING PIERCE’S APPLICATION?**

11 A. Pierce’s Application seeks funding under the NEBP in order to provide voice and
12 broadband capability to rural areas surrounding the City of Norfolk, Nebraska, which
13 given their proximity obviously include surrounding areas within Madison County,
14 Pierce County, Stanton County, and Wayne County. These are areas that are already
15 being served by multiple competing broadband providers, all of whom have made such
16 services possible through their own private investment, not government subsidization,
17 and thus, Pierce should be ineligible for subsidization and the Commission should deny
18 Pierce’s Application. *See* Prefiled Test. Of Tom Schommer 1-2, Sept. 27, 2013
19 (indicating that, similarly to Cable One, Telebeep has also made its services available to
20 customers “with the use of private funds only” and “without subsidies” and that “[a]ny
21 subsidies to Pierce . . . to build out . . . in these areas would be unnecessary and unfair to
22 existing providers . . . which have expended private capital to build facilities and services
23 that Pierce would only duplicate”). If the Commission grants Pierce’s Application, it will
24 not only be supporting unfair competition, but encouraging it, particularly here, where the

1 proposed service areas are already being served by existing providers who have invested
2 their own private capital, and unfair competition is not the purpose of the NEBP.

3 **Q. PLEASE DESCRIBE CABLE ONE AND IDENTIFY WHAT KINDS OF**
4 **SERVICES IT CURRENTLY PROVIDES TO ITS CUSTOMERS.**

5 A. Cable One is a franchised cable operator that serves the City of Norfolk, Nebraska and
6 surrounding areas and provides wireline internet access service, with speeds of 50 Mbps
7 downstream and 5 Mbps upstream, to business and residential customers to many of these
8 areas.

9 **Q. WHAT IS CABLE ONE'S SERVICE AREA?**

10 A. Cable One's service area includes various rural parts of Madison County, Pierce County,
11 Stanton County, and Wayne County surrounding the City of Norfolk, Nebraska.
12 Specifically, Cable One offers the internet access services described above in the
13 Madison County, Pierce County, Stanton County, and Wayne County Census Tracts
14 listed as Exhibits A-D in my Pre-filed Direct Testimony.

15 **Q. ARE THERE ANY OTHER SERVICE PROVIDERS WHO SERVICE THIS**
16 **AREA?**

17 A. Yes. Notwithstanding Cable One's presence in these areas, there are also two other
18 broadband providers serving rural areas around Norfolk with broadband wireless internet
19 access service, including Telebeep and Connecting Point, both of which, in addition to
20 Cable One, provide service exceeding the NEBP's minimum standards.

1 **Q. CAN YOU DESCRIBE THE TYPES OF SERVICES PROVIDED BY TELEBEEP**
2 **AND CONNECTING POINT?**

3 A. Telebeep provides internet connectivity throughout these areas at 10-25 Mbps
4 downstream and 3 Mbps upstream speeds, while Connecting Point provides internet
5 connectivity at up to 15 Mbps downstream and 15 Mbps upstream speeds.

6 **Q. DO ANY OF PIERCE’S PROPOSED SERVICE AREAS OVERLAP WITH**
7 **CABLE ONE’S SERVICE AREAS?**

8 A. Yes and to the extent that these areas overlap with Pierce’s proposed service areas, those
9 overlapping areas should not be considered “unserved” or “underserved” by existing
10 broadband providers, and are ineligible for subsidy to Pierce to build a new broadband
11 service. The overlap between Pierce’s proposed service areas and Cable One’s service
12 areas is clearly illustrated by the Nebraska Broadband Map, which is available through
13 the Nebraska Broadband Mapping Site.

14 **Q. HOW ABOUT THE SERVICE AREAS FOR TELEBEEP AND CONNECTING**
15 **POINT? DO THEIR SERVICE AREAS OVERLAP WITH PIERCE’S**
16 **PROPOSED SERVICE AREAS?**

17 A. Yes and any assertion by Pierce that the rural areas around the City of Norfolk are
18 somehow “unserved” or “underserved” by existing broadband providers who provide
19 sufficient download and upload speeds is wholly inaccurate, is unsupported conjecture,
20 and contrary to the facts. In fact, Telebeep stressed this in its pre-filed testimony by
21 directing the Commission’s attention to the “official Nebraska Broadband Mapping Site
22 which clearly indicates that there are already several providers, including [Telebeep],
23 providing broadband service . . . in the area targeted by Pierce,” and further, by pointing

1 out that Pierce's Application proposes the construction and placement of at least two
2 towers, both of which would "clearly [be] right in the heart of [Telebeep's] existing
3 Wireless Fixed Broadband Network, [a] network that is already providing unsubsidized
4 and reliable broadband service . . . to satisfied customers in the proposed area." Prefiled
5 Test. of Tom Schommer 2.

6 IV. OVERVIEW AND RECOMMENDATIONS

7 Q. DO YOU HAVE A RECOMMENDATION FOR THE COMMISSION?

8 A. Yes. It is my opinion that the assertion by Pierce that the rural areas around the City of
9 Norfolk are somehow "unserved" or "underserved" by existing broadband providers is
10 wholly inaccurate, unsupported conjecture, and contrary to the facts, and that, ultimately,
11 subsidizing Pierce's proposed operations would be unnecessary, contrary to law and
12 unfair to existing providers, who already have expended significant private capital to
13 build facilities and services in the aforementioned service areas. NUSF funds are not
14 intended to be provided for projects, like the one proposed by Pierce, which seek funding
15 to provide service in areas that are already served by existing providers at speeds equal to
16 or exceeding the NEBP's minimum standards. Pierce's Application clearly seeks to use
17 NUSF funds improperly and, as aptly stated by Telebeep, "in opposition to the goals of
18 the National Telecommunications and Information Administration's (NTIA) State
19 Broadband Initiative." If permitted to do so, the Commission will effectively establish
20 that it not only condones the improper use of NUSF funds but that it espouses such use
21 and will thereby encourage other service providers to seek improper subsidization for
22 their projects while "burdening existing broadband providers . . . to have to compete with
23 a public funded competitor." *Id.* at 3. Furthermore, Pierce has not (and cannot)
24 demonstrate that the service areas proposed in its Application are truly unserved.

1 Therefore, on behalf of Cable One and in support of Cable One's Protest, I respectfully
2 request that the Nebraska Public Service Commission deny Pierce's NUSF-77
3 Application seeking funding under the Nebraska Broadband Pilot Program and for any
4 other relief the Commission deems just and proper.

5 **Q. DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**

6 **A. Yes.**

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Service Fund: Application to the Nebraska)	
Broadband Pilot Program (NEBP) received)	
from Pierce Telephone Company)	
)	

STATE OF NEBRASKA)
) ss.
COUNTY OF Madison)

AFFIDAVIT ADOPTING PRE-FILED REBUTTAL TESTIMONY OF MIKE DRAHOTA

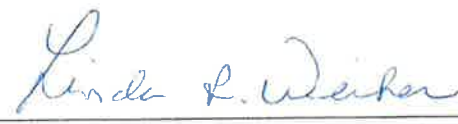
Mike Drahota being duly sworn on oath, states that he is Mike Drahota whose Pre-filed Rebuttal Testimony in the above-entitled proceeding accompanies this affidavit.

Mike Drahota further states that such Testimony is a true and accurate statement of his answers to questions contained therein, and that he does adopt those answers as his sworn rebuttal testimony in this proceeding.



Mike Drahota

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public, this 10th day of October, 2013.



Notary Public
My Commission Expires: 2-28-14



CERTIFICATE OF SERVICE

I, Meghan A. McCarthy, a senior paralegal at the law firm of Edwards Wildman Palmer LLP, hereby certify that a true and correct copy of the above and foregoing "Pre-filed Rebuttal Testimony of Mike Drahota" has been sent via e-mail on this 11th day of October, 2013, to the following:

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